IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 315 of 1993
WITH
INCOME TAX REFERENCE Nos. 290 & 291 of 1995
WITH
INCOME TAX REFERENCE No. 119 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NILGIRI INVESTMENTS PVT. LTD.
M/S.PANCHAVATI INVESTMENTS PVT.LTD.
M/S.BERAR INVESTMENTS PVT.LTD.
M/S.DHAULGIRI INVESTMENTS PVT.LTD.

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT
for Applicant.
MR R.K PATEL for Respondent.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

All these references made by the Income Tax Appellate Tribunal at the instance of the revenue, raise a controversy about the interpretation of the provisions of Section 215(5) of the Income Tax Act,1961 (hereinafter referred to as 'the Act'), and Section 194A of the Act. The questions are as under :

INCOME TAX REFERENCE NO.315 OF 1993 FOR A.Y.1985-86.

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee's claim may be re-examined by the Income-tax Officer, keeping in view that it is the amount of the tax deductible at source and not tax deducted at source, which is to be taken into consideration while computing the assessed tax in terms of Section 215(5) ?"

INCOME TAX REFERENCE NOS.290 & 291 OF 1995 FOR A.Y.1982-83, 1983-84, 1984-85 AND 1985-86.

1 "Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to work out the amount of tax deductible at source on the amount of interest income and to give due credit for the same for the purpose of working out the assessed tax under section 215(5) notwithstanding the fact that no tax was in fact deducted at source?"

2 "Whether, the Appellate Tribunal has correctly appreciated the provisions of section 194A which provides that tax is deductible only when interest is credited or paid to the account of the assessee ?"

INCOME TAX REFERENCE NO. 119 OF 1996 FOR A.Y.1982-83.

"Whether, the Appellate Tribunal is right in law and on facts in holding that the tax deductible at source should be deducted and thereafter interest u/s.215

should be calculated ?"

2 We have heard Mr.Akil Qureshi, learned Counsel for the revenue and Mr.R.K.Patel, learned Counsel for the respondent-assessee.

3 At the hearing of these references, our attention has been invited to the decision in C.I.T. vs. Ranoli Investment P.Ltd.& Others (1999) 235 I.T.R. 432, wherein this Court held as under :

"The words 'assessed tax' occurring in sub-section (1) of section 215 of the Income-tax Act,1961, dealing with interest payable by the assessee are to be read in the light of the special meaning given to them under sub-section (5) of section 215 and accordingly, 'assessed tax' would mean not the full amount of the assessed tax determined on the basis of the regular assessment, but the amount reduced therefrom to the extent of tax deductible in accordance with the provisions of sections 192 to 194, 194A, 194C,194D and 195 so far as it related to income subject to advance tax.

The words 'reduced by the amount of tax deductible' which appear in sub-section (5) of section 215 also occur in clause (iii) of section 209(1)(a) dealing with computation of advance tax. The amount of tax deductible in accordance with section 194A would obviously mean the tax as was required to be deducted in respect of the interest income at the time of credit to the account of the payee or payment whichever is earlier.

The words 'at the time of credit of such income to the account of the payee 'in section 194A would take within their sweep, the interest debited to 'interest account' or any other nominal account when the debit is for a specific amount calculated with reference to the deductor's liability to a particular creditor in accordance with the terms and conditions of the loan. The time of deduction would be when the interest is credited. The liability of the deductor would arise for failure to make deduction at the time of credit notwithstanding that it came to be made later on at the time of actual payment. Deduction made at such belated

stage of payment, would not be 'tax deducted at source' properly so-called and such subsequent deduction even when deposited with the Government, cannot be treated as tax deducted at source.

On a combined reading of sections 190, 191, 194A, 198, 199, 200, 202, 203 and 205, it emerges that as soon as the tax is actually deducted at source by the person responsible to make payment, the liability of the assessee to pay that tax gets discharged and it is for the person who has deducted the tax at source to deposit the same with the Government. If the tax is not so deducted, it remains payable by the assessee direct under section 191 of the Act."

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"that the Tribunal was right in holding that the tax deductible at source should be reduced from the tax determined on the basis of regular assessment and thereafter, the liability to pay interest should be calculated under section 215 of the Income-tax Act,1961".

4 Accordingly, we answer all the questions referred to us in these references in light of the aforesaid decision in favour of the assessee and against the revenue.

5 The references stand disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt